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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-210

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

- a. Section RL 9.04 (3) directs the Department of Revenue (DOR) to mail a notice to the applicant. Has the DOR agreed to this? Is there authority for the department to require this?
- b. The burden of persuasion set forth in s. RL 9.12 (2) should be compared with s. 440.20 (3), Stats. Further, the rule appears to say that the applicant has the burden of going forward. Is that accurate?
- c. In general, it is suggested that ss. RL 9.11 and 9.12 be compared with pertinent provisions of chs. 227 and 440, Stats., for consistency with those provisions. In light of the material in those chapters, can portions of the rule be eliminated?

2. Form, Style and Placement in Administrative Code

- a. In s. RL 9.03 (1), it is suggested that “person” be included in a separate subsection within s. RL 9.03 as a separate definition. In the alternative, if “person” is used only in s. RL 9.03 (1), “in this subsection” could replace “in this chapter” in that subsection.
- b. The title to s. RL 9.04 (1) is not descriptive. In that subsection, it is suggested that the first reference to “an application” be replaced by “a renewal application.”
- c. In s. RL 9.04 (2) and (3), “for renewal” should be deleted; see the definition of “applicant.”

d. In s. RL 9.04 (3), first sentence, “any” should precede “delinquent”; see the definition in s. RL 9.03 (4). This comment also applies to s. RL 9.04 (4).

e. It is suggested that s. RL 9.05 be subdivided into two subsections, with the existing two sentences constituting separate subsections. The first subsection should be further subdivided into an (intro.) clause and two paragraphs.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. RL 2.02 (1), reference should be to s. RL 2.17, rather than s. RL 21.7.

b. Section RL 9.01 refers to s. 440.03, Stats., as authority for promulgation of ch. RL 9. This is a fairly lengthy section of the statutes. Can a more specific cite be used? Can the statutes cited in the analysis be cited in s. RL 9.01?

c. In s. RL 9.02 “as created by 1995 Wisconsin Act 27” should be deleted.

d. In s. RL 9.05, it appears that the reference at the end of the first sentence should be worded as follows: “within the time required under s. RL 9.04 (3).”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the first paragraph of the department’s analysis, “states” should be “state.”

b. In s. RL 9.03 (4), is it clear what “having been finally adjudged to be delinquent in the payment of taxes” means? Does it mean, for example, amounts reduced to a tax warrant or amounts for which the time limit for appeal has passed? It is suggested that the department consult with the DOR concerning the definition.

c. In s. RL 9.04 (3), second sentence, “received” should be “receives.”

d. Is s. RL 9.05 intended to mean that once renewal is denied, an applicant is precluded from ever reapplying? Consideration should be given to further clarification in this regard, either in the text of the rule or in a note to the rule. Should the notice sent to the applicant regarding the right to a hearing include information on the required form of a hearing request?

e. In s. RL 9.06 (1) and (2) (intro.), “a” should precede “hearing.”

f. In s. RL 9.08, a comma should follow “applicant” and the first “and” should be deleted. Also, s. RL 9.08 indicates that the DOR is a party to a tax delinquency denial review. Should the reference be to “the department”?

g. In s. RL 9.10 (3), what is the deadline for mailing to the department a document that has been filed and served by facsimile transmission? It appears that the mailing can occur after the actual filing and serving but no deadline is given. In the first sentence of the subsection, “the” should precede the last reference to “department.”

h. In s. RL 9.13, should reference to “disciplinary authority” be to “the department”?